



# THE INTERIM

*A Monthly Newsletter of the Montana Legislative Branch*

Volume XV, No. 8

Helena, Montana

January 2006

## IN THIS ISSUE

|   |    |
|---|----|
| QUALITY SCHOOLS COMMITTEE .....   | 1  |
| STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE .....                    | 1  |
| EDUCATION AND LOCAL GOVERNMENT COMMITTEE .....                                | 3  |
| LEGISLATIVE FINANCE COMMITTEE .....   | 4  |
| ENERGY AND TELECOMMUNICATIONS COMMITTEE .....                                 | 6  |
| ECONOMIC AFFAIRS COMMITTEE .....  | 7  |
| LAW AND JUSTICE COMMITTEE .....   | 7  |
| STATE-TRIBAL RELATIONS COMMITTEE .....  | 8  |
| ENVIRONMENTAL QUALITY COUNCIL .....   | 9  |
| CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE .....                | 10 |
| REVENUE AND TRANSPORTATION COMMITTEE .....                                    | 10 |
| MONTANA LEGISLATIVE REFERENCE CENTER .....                                    | 12 |
| LEGISLATIVE AUDIT COMMITTEE .....   | 12 |
| THE BACK PAGE .....   | 16 |
| IDENTITY THEFT: IS SOMEONE PLUNDERING YOUR GOOD NAME FOR UNTOLD RICHES? ..... | 16 |
| INTERIM CALENDAR .....  | 20 |

## THE INTERIM

Montana Legislative Services Division  
Room 110, State Capitol  
PO Box 201706  
Helena, MT 59620-1706  
Phone: (406) 444-3064  
Fax: (406) 444-3036

**THE INTERIM** is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

## QUALITY SCHOOLS COMMITTEE

Committee finishes its work...The Quality Schools Interim Committee finished its work on Dec. 5. Committee staff summarized the public comments on the committee's draft legislation implementing a new school funding formula. Sen. Don Ryan moved to adopt the draft legislation with some technical changes recommended by staff. Although members generally thought that the committee had developed a good formula, they concluded that there was still too much work to be done on the proposal. After much discussion, the motion failed.

Sen. Jon Tester presented a letter from Greg Petesch, the Legislature's chief legal counsel, stating that the committee has fulfilled all of the requirements of Senate Bill 525, which was the bill that created the committee. Tester said that he believed that any proposals for legislation to fund schools before the 2007 Legislature can meet are outside of the responsibility of this committee, and the committee's work is done.

Shortly into the meeting, the committee recessed to attend Gov. Brian Schweitzer's press conference announcing a special session to begin on Wednesday, Dec. 14 to deal with school funding and the unfunded liability in public retirement systems and to confirm the nominations of judicial appointments and an agency director appointment. The governor distributed his school funding proposal at the press conference. The committee reconvened after the press conference. Rep. Monica Lindeen, committee chair, asked Petesch what was left for the committee to do given the governor's announcement. Petesch said that once the governor issues the call, any legislator can request a bill that fits within the call. There is nothing else for the committee to do.

Sen. Dave Lewis asked Jim Standaert, Legislative Fiscal Division, for a preliminary analysis of the governor's school funding proposal. Standaert gave a brief review as he had just seen the proposal that morning and had not had an opportunity to make a full analysis. The committee discussed whether the governor viewed his proposal as a long-term solution. The committee also discussed introducing legislation in the special session to extend the life of the committee.

After thanking the committee and the staff for all of their hard work and dedication, Lindeen adjourned the meeting.

Final report to be written...Now that the committee has completed its work, staff will begin writing the committee's final report. The report will be available on or before Sept. 15, 2006.

## STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee recommends legislation for special session...The State Administration and Veterans' Affairs Committee met on Nov. 30 in Helena. As part of the HJR 42 study of the actuarial soundness of the state's public employees' retirement plans, committee staff presented revised, draft legislation to: (1) deal with the unfunded liabilities in the public retirement plans (LC2005); and (2) expand the duties of the committee to include among other things, a review of proposed legislation affecting

public retirement systems (LC2006). After reviewing each of the drafts and making some technical changes to LC2005, the committee recommended that both drafts be introduced by request of the committee at a special session if the call would allow introduction.

Gov. Brian Schweitzer's call for a December special session provided for the introduction of LC2006 (but not LC2005). Rep. Verdel Jackson carried House Bill 2 to implement the committee's recommendations. The bill passed both houses of the Legislature and was signed by the governor on Dec. 19. Under HB 2, the committee's duties are more clearly prescribed in statute. Among other things, the committee is required to review proposals affecting the state's public employee retirement systems.

House Bill 1, introduced by Rep. Dave Wanzonried, contained the governor's proposed appropriations for school funding and the infusion of cash into the retirement plans. The legislation included the committee's recommendation for a \$100 million general fund appropriation to the Teachers' Retirement System pension trust fund. HB 1 also includes a \$25 million general fund appropriation to the Public Employees' Retirement System pension trust fund. The committee had recommended in LC2005 that the \$25 million be expended more broadly: \$10.9 million to the PERS defined benefit plan (the pension trust fund); \$1.4 million to be used for repaying the loan for startup costs of the PERS defined contribution retirement plan; \$11.5 million to be deposited to the credit of the Sheriffs' Retirement System; and \$1.2 million to be deposited to the credit of the Game Wardens' and Peace Officers' Retirement System. The committee will likely continue to consider options to address the unfunded liabilities in the state's retirement systems.

Even with the appropriations to TRS and PERS, the Legislature will probably have to increase the employers' rates of contributions to both systems in order to bring the systems into compliance with constitutional and statutory requirements. In addition, the funding in HB 1 did not deal with the unfunded liability in either the Sheriffs' Retirement System or the Game Wardens' and Peace Officers' Retirement System. Funding of public employee retirement systems will likely be on the agenda for the 60th Legislature in January 2007.

Committee to proceed with retirement study...For the rest of the interim, the committee will consider whether to gather more information regarding the retirement systems. Some of the topics they will consider include:

- the existing PERS defined contribution plan. This might include looking at the demographics of participants under this plan; the effects, if any, of the defined contribution plan on the PERS defined benefit plan; and unanticipated consequences of the defined contribution plan on all aspects of the retirement system;
- a comparison of Montana's public employee retirement plans with retirement plans in the private sector, including defined benefit plans, 401(k),

403(b), et al.;

- more detailed comparisons of Montana's public employee retirement plans with retirement plans in selected states;
- retirement benefits as a component of recruitment and retention strategies;
- a closer look at the investment of Montana public retirement system funds, including more detailed comparisons with other public retirement systems' investment or comparisons with retirement systems in the private sector;
- early retirement options, including prospects, costs, benefits, etc., and how early retirement has worked elsewhere;
- specific components of the state's existing plans, including vesting periods;
- the development and adoption of actuarial assumptions;
- the investment portfolio, in as much detail as desired, but presumably more than a general overview of asset allocations among asset classes;
- the pros and cons of issuing "retirement bonds" to adequately fund the various plans.

Committee monitors hiring of retirement fund director...Because the committee is directed to monitor the activities of the Montana Public Employees' Retirement Board and its staff (the Montana Public Employees Retirement Administration), the committee has directed its staff to inform members of developments in what has become the saga of recruiting and hiring a new MPERA executive director to succeed Mike O'Connor, scheduled to retire in December 2005. (In addition to testimony provided to the committee as contained in the minutes, there is posted on the Committee's webpage a copy of Budget Director David Ewer's report to the governor regarding the MPERA's initial recruiting and hiring process.) The SAVA will continue to monitor developments of this situation.

Stakeholders to be involved...The committee will be disseminating notice to stakeholders in the state's public employee retirement systems that the committee, pursuant to 5-5-228, MCA, will be soliciting proposals to make changes in the retirement systems and that the committee intends to begin reviewing proposals at its May meeting.

March meeting planned...The committee is scheduled to meet Monday, March 6 in Room 137 of the Capitol. (This is a change from the original schedule.) The public is invited to attend the meeting and written comments are appreciated. An agenda for the meeting will be posted to the

committee's webpage as soon as possible. You can also contact Dave Bohyer at (406) 444-3064 or [dbohyer@mt.gov](mailto:dbohyer@mt.gov).

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Questionable weather (the question being: "Could it possibly snow any more?") and unforeseen commitments for many of the members conspired to force the cancellation of the Dec. 2 meeting of the Education and Local Government Interim Committee. The committee's two subcommittees, however, met on Dec. 1 and continued to chip away at their respective work plans.

Local Government Subcommittee...Most of the subcommittee's agenda focused on land use planning and the subcommittee's assigned study, SJR 11. Representatives of the SJR 11 working group presented the group's land use planning problem and goal statements, reached by consensus at the group's November meeting. Proposals that the group recommends to the subcommittee will deal with these problems and will be in accordance with these goals, although not all stated problems and goals may have associated legislative proposals.

**Problem #1:** The lack of long-range planning and clear standards in some jurisdictions has resulted in unnecessarily unpredictable and costly development processes and outcomes.

**Problem #2:** Local governments, planning boards, and staff often lack the funding and time to do effective planning because so much of their time is consumed by land use reviews and defending against or heading off lawsuits.

**Problem #3:** There is a need for more education of local governments, staff, planning boards, and the public (including the development community) to achieve an increased appreciation of the benefits of effective planning, which will lead to more predictable and sustainable development and more predictable land use reviews and outcomes.

**Problem #4:** It is problematic when jurisdictions rely solely upon the subdivision review process when making land use and development decisions; the current subdivision review process does not balance all rights impacted by development including dealing with and mitigating the cumulative impacts of development.

**Problem #5:** There is a lack of technical assistance to help local governments and the public consider land use and planning issues.

**Problem #6:** The lack of long-range planning and implementation of plans through land use regulations and other measures results in conflict and expensive corrective solutions to the public and private sectors.

**Problem #7:** Actions taken by state agencies and other entities, including school districts, sometimes undermine local planning efforts.

**Goal #1:** Ensure a land use and development review process that is based on due process and locally adopted standards and criteria and that implements the growth policy.

**Goal #2:** Investigate the creation of a tiered system of planning and land use laws.

**Goal #3:** Ensure adequate funding, education, and technical assistance for land use planning and implementation.

**Goal #4:** Correct problems that have arisen from SB 116, SB 185, SB 290, and other land use-related legislation.

**Goal #5:** Address the issues specifically identified in SJR 11: review of definitions, review of exemptions, and clarification of legislative intent in determining when subdivision review is required.

**Goal #6:** Increase coordination between state agencies and local planning offices.

Subcommittee members wondered whether the problem and goal statements were too broad to achieve consensus on specific proposals but were assured that consensus continued to be the working group's .

Technical Assistance for Land Use Planning...The SJR 11 study and the implementation of SB 116 and SB 290, both enacted in 2005, have highlighted a growing concern among local planners over their increasing workloads and a concomitant absence of centralized technical assistance. Before the Department of Commerce's Community Technical Assistance Program (CTAP) was discontinued in 2003, that staff fielded a variety of questions about subdivision review, land use planning, land use regulations, and the intricacies of land use law. The subcommittee has been told repeatedly that this service is greatly missed. Members heard one potential solution at the Dec. 1 meeting and in February, they will hear of additional possibilities.

Dave Cole, the Department of Commerce's Community Development Division administrator, reported that he will be including a request through the department's executive planning process to re-establish CTAP. His plan includes 2 full-time equivalent positions: one attorney and one senior planner, with an annual program budget of \$170,000. Cole noted that the department still has the statutory mandate to provide the services CTAP provided, but he did not know how favorably the governor's office will view the proposal, considering that it would be creating a new program.

John Horwich, director of the University of Montana's School of Law Land Use Clinic, will offer additional ideas for land use planning technical assistance at the subcommittee's

February meeting. Horwich and his students have been working on the development of model subdivision regulations that reflect changes brought about by SB 116. At the same time, he has been exploring the possibilities of involving the Land Use Clinic in providing technical assistance and researching how other states handle assistance for local land use planning offices.

Meetings scheduled for February...The Local Government subcommittee will meet on Thursday, Feb. 23 and the full committee will meet on Feb. 24. Check the committee's webpage in mid-February for agendas and other information. For more information about the Local Government subcommittee or the full committee, contact Leanne Kurtz at (406) 444-3593 or [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

Postsecondary education subcommittee renews policy goals agreement with regents...At the December meeting of the Postsecondary Education Policy and Budget subcommittee, members unanimously approved the following Shared Policy Goals and Accountability Measures for the Montana university system:

**Shared Goal I:** Increase the overall educational attainment of Montanans through increased participation, retention, and completion rates in the Montana university system.

**Shared Goal II:** Assist in the expansion and improvement of the state's economy through the development of high-value jobs and the diversification of the economic base.

**Shared Goal III:** Improve [Montana university system] institutional and system efficiency and effectiveness.

Each of these shared goals also includes a series of accountability measures to be considered for use in future budget performance evaluation.

The subcommittee also unanimously renewed the biennial Agreement with the Montana Board of Regents, agreeing that these shared policy goals will help guide public policy in regard to postsecondary education in Montana into the 2009 biennium.

The subcommittee intends to use this document to guide its consideration of supporting budget initiatives and potential funding recommendations for House Bill 2 in the 2009 biennium. At the next meeting, the subcommittee will be hearing a series of budget initiatives from the Montana university system to consider drafting decision packages for state funding in HB 2 for the 2009 biennium budget.

PEPB subcommittee to meet in February...The next subcommittee meeting is scheduled for Thursday, Feb. 23, in Helena. The meeting will be a joint meeting with the Board of Regents. For information about the meeting, visit the subcommittee website by going to the Education and Local Government webpage and clicking on the

"Postsecondary Education Policy and Budget Subcommittee" link

You may also contact subcommittee staff Alan Peura, Legislative Fiscal Division, at (406) 444-5387 or [apeura@mt.gov](mailto:apeura@mt.gov).

## LEGISLATIVE FINANCE COMMITTEE

Committee meets in December...The Legislative Finance Committee met on Dec. 6 and 7. The agenda and various reports are available on the Legislative Fiscal Division website at <http://www.leg.mt.gov/css/fiscal/default.asp> or you can contact Clayton Schenck for more information at [cschenck@mt.gov](mailto:cschenck@mt.gov) or (406) 444-2986. The committee heard reports on various policy issues and fiscal concerns.

Correctional facility expansion plans...The Department of Corrections reported on cost overruns for FY 2006. The department is projecting a deficit of \$13.6 million that may be offset with unexpended juvenile intervention funds and personal services contingency funds (administered by the governor's budget office) for a net deficit of \$11.8 million for FY 2006. The department attributes almost \$8 million, or about 60 percent, of the cost overruns to a larger than increase in the secure care population. According to the department, vacancy savings, overtime costs, and pay increases are among the other factors contributing to the deficit. The department also discussed new initiatives underway to increase system capacity such as the development of a revocation center, a methamphetamine treatment program, and increased pre-release beds. For additional information, contact Pat Gervais at [pagervais@mt.gov](mailto:pagervais@mt.gov) or (406) 444-1795.

Department of Public Health and Human Services: Program issues...The committee heard a report summarizing the changes to the contract with BlueCross BlueShield to administer and pay claims for the Children's Health Insurance Program. Premiums increase a minimum of 6 percent over the previous year, with the state sharing a portion of claims costs that exceed 6 percent up to a maximum of 11.9 percent.

The committee also discussed enrollment in CHIP, which is significantly below the level funded by the Legislature (currently 12,000 children compared to the budgeted 13,900 in FY 2005 and 15,600 in FY 2006). Additional slots will also become available due to Medicaid redesign and other legislation.

DPHHS had intended to present an outreach plan detailing how it would manage outreach to enroll children in CHIP, but the plan has not been completed. Sens. Carol Williams and Mike Cooney were appointed to track the plan's progress for the March committee meeting.

The LFC also heard a report about the projected \$3 million general fund shortfall estimated in the first DPHHS budget status report for FY 2006. The shortfall is due primarily to cost overruns at the Montana State Hospital and

the Montana Developmental Center. The MSH 2005 appropriation is sufficient to fund an average daily population of 170. However, the year to date daily population is averaging about 195 people, and in excess of 200 people on many days. MSH reopened a 20-bed unit and received permission from the governor's budget office to hire an additional 36.6 staff to ensure patient and staff safety and to provide treatment to patients. The budget office has also approved increasing the pay for MSH nurses in order to recruit and retain staff. For more information, contact Lois Steinbeck at lsteinbeck@mt.gov or (406) 444-5391.

Pandemic flu preparedness...The Department of Public Health and Human Services discussed the state of preparedness for a pandemic influenza outbreak. The department reported it has drafted a pandemic influenza response plan that is to be used in conjunction with other plans. The response plan lays the groundwork for an emergency response. The goals of the response plan are to:

- limit or slow the spread of an influenza outbreak in Montana;
- mitigate the disease by easing the suffering and reducing the number of deaths; and
- sustain the infrastructure and mitigate the impacts of the outbreak upon society.

The department said that past experiences and exercises have prepared most counties to respond to an outbreak. For more information, contact Shane Sierer at ssierer@mt.gov or at (406) 444-2722.

Supplemental appropriations...The governor has proposed transferring \$2.6 million general fund from the FY 2007 appropriation in the Department of Natural Resources and Conservation to FY 2006 to pay for a portion of the state's share of FY 2006 fire costs. The Legislature does not budget for fire costs. DNRC first pays for all current costs out of its appropriation and then requests a supplemental appropriation from the next Legislature for the remaining unfunded biennial state costs. LFD staff did not see any problems with the proposed transfer. For more information, contact Barb Smith at basmith@mt.gov or (406) 444-5347.

General fund update: 2007 biennium projected...Revenue projections prepared for the December special session showed strengthening revenues for personal income taxes, corporation taxes, oil and gas production taxes, and property taxes. Going into the special session, the 2007 biennium ending general fund balance was projected to be \$425.4 million before any legislative action. This balance was derived by assuming FY 2007 supplemental appropriations of \$38.3 million for items such as wildfire costs, Department of Corrections cost increases from population growth, and cost overruns for the Department of Public Health and Human Services. Legislative actions in the special session totaled \$196.8 million general fund, \$3.3

million of which is a reduction in previously anticipated appropriation reversions. The impact of special session actions by the Legislature lowers the projected fund balance to \$228.6 million for the 2007 biennium. For more information, contact Terry Johnson at tjohnson@mt.gov or (406) 444-2952.

School funding study update...The LFC got its first look at the governor's school funding proposal for the special session. The proposal included \$31.2 million in ongoing general fund spending and \$33.5 million in one-time general fund spending. In the special session, after numbers were further refined and some additions proposed by the Superintendent of Public Instruction were included, the governor's proposal was adopted with \$37.2 million ongoing spending and \$34.5 one-time spending. For more information, contact Jim Standaert at jstandaert@mt.gov or (406) 444-5389.

Pension Plans Unfunded Liability...Committee staff reported that the State Administration and Veterans' Affairs Interim Committee approved two bill drafts that would be available for the special session or the next regular session. One proposal requires SAVA to monitor the soundness of the retirement plans and to review proposed legislative changes. That proposal was enacted in HB 2 during the special session; it included a \$5,000 general fund appropriation to pay for additional meeting days. The second bill would have provided a \$125 million general fund cash infusion into the retirement systems, increased employer contribution rates, and closed some loopholes. The \$125 million general fund cash infusion was included in the governor's spending proposal in HB 1. Because this is only a partial solution, additional measures can be expected in the regular session. (See the SAVA article beginning on p. 1 for related coverage) For further information, contact Jon Moe at jonmoe@mt.gov or at (406) 444-4581.

Energy Price Increases...The committee received an update on the impact of higher natural gas prices on state budgets. Through November, costs were significantly higher than estimated by the last Legislature when establishing appropriation authority. In particular, the Department of Corrections and the Department of Military Affairs are spending significantly more than expected and may have to reallocate resources to pay these additional costs or take other mitigation actions. The Department of Corrections is experiencing severe budget pressures due primarily to increasing populations, so its options for reallocation are limited. For more information, contact Taryn Purdy at tpurdy@mt.gov.

Staff also presented a report on the impact to agency budgets from higher motor fuel prices. The report highlighted the impacts of high motor fuel prices on agency services that are performed through travel in state vehicles. The report noted that the current prices are about 50 percent higher than the prices that existed during the base year for the current budget. Although prices are significantly higher

than during the base year, motor fuel expenditures comprise relatively small portions of agency budgets and fuel conservation initiatives appear to be working to control over-expenditure of motor fuel budgets. In the end, higher motor fuel prices should not lead to a budget crisis nor impact state services. For further information, contact Greg DeWitt at [gdewitt@mt.gov](mailto:gdewitt@mt.gov).

Financial Reliance on Federal Funds...The committee heard a report on federal funds as a background to the study being undertaken by LFD staff on federal funds in Montana and the potential impact of federal deficits. The report discussed how much and for what purposes federal funds are received by state government, the federal budgeting process, and Congressional Budget Office estimates of current and future federal budget deficits. Reports addressing the impact of federal action on Montana budgets and services will be presented at future meetings of the LFC. For more information, contact Taryn Purdy at [tpurdy@mt.gov](mailto:tpurdy@mt.gov) or (406) 444-5383.

RIT Subcommittee...The Resource Indemnity Trust (RIT) subcommittee met on Dec. 5. The focus of this meeting was to take testimony regarding the programs that are funded with RIT interest or the Resource Indemnity and Ground Water Assessment (RIGWA) tax. Thirty-five programs from eight agencies and two universities provided program information, identified management issues and defended the use of RIT or RIGWA resources. The subcommittee rated the programs based on benefits to the state and conformity with RIT or RIGWA funding statutes in order to develop a priority-funding list. During the presentations, a few themes were present: 1) declining or stagnant federal funds resulting in the need for additional funding; 2) inadequacy of fees or surcharges leading to the need for additional funding; and 3) difficulties in recruiting and retaining qualified environmental scientists and related staff.

The next meeting of the RIT subcommittee will be in March prior to the full meeting of the LFC. The subcommittee will take testimony from the industries that pay RIGWA taxes or have paid into the RIT trust, interested environmental groups, and the public. The subcommittee will finalize the priority ranking and discuss changes in state changes to meet the subcommittee's recommendations. The subcommittee will present its recommendations to the LFC in June. For more information, contact Barbara Smith at [basmith@mt.gov](mailto:basmith@mt.gov) or (406) 444-5347.

Community Colleges Funding Study...Staff of the Legislative Fiscal Division, under the direction of the Legislative Finance Committee, is conducting an interim study to look specifically at each community college in an attempt to determine if the cost of education (COE) factor is flawed and, if so, to identify formula options whereby a more accurate calculation of the cost of education may be determined. The study includes representatives from the governor's budget office and from the Commissioner of Higher Education. The Legislature's request for this study

originated in the joint appropriations subcommittee on education and is contained in HB 2. This working group has conducted a site-visit to each community college to gather information and data about each school and determine:

- Is there a problem with the COE factor in the community college funding formula, specifically has the factor lost the relevance that was intended by the legislature when it was proposed in the 1981 funding study, adopted by the Legislature and subsequently used in HB 2 calculations?
- If yes, identify those problems and the consequences.
- Identify options for the Legislature to consider that address problems identified with the COE factor.

A preliminary report is expected in January with the complete report to be presented to the Legislative Finance Committee at their March 2006 meeting. For more information about the study, contact Alan Peura at [apeura@mt.gov](mailto:apeura@mt.gov) or at (406) 444-5387.

Special Session Reports...The Legislative Fiscal Division prepared a *Legislative Budget Analysis* report for the December special session. The report provided legislators with an analysis of the governor's proposals included in the special session call. The report focused on school funding and the unfunded liabilities of public retirement systems, and included an update of general fund revenue and fund balance projections. The report was distributed on the first day of the two day session and is available on the LFD website. A *Legislative Fiscal Report* is being prepared for distribution in January 2006. This report will describe background for issues and the actions of the Legislature in the December special session and will be mailed to every legislator.

## ENERGY AND TELECOMMUNICATIONS COMMITTEE

Committee meets in November...The Energy and Telecommunications Interim Committee met on Nov. 22. It was one of the busier meetings that the committee will hold this interim. Matters covered and actions taken were:

- The committee reviewed the 2004 annual universal system benefits reports of NorthWestern Energy and the Montana-Dakota Utilities. The committee found no comment or action necessary.
- A representative of the Public Service Commission discussed qualifying facilities in response to a committee request for more background on the subject. Of particular interest was the question of how the recent federal energy bill affects qualifying

facilities.

- The committee had little comment on the preceding evening's public forum related to the committee's SJR 36 study of distributed energy generation.
- Committee staff presented information on the SJR 39 study of an energy planning and coordinating entity for Montana. Staff discussed a survey to which 60 institutions and individuals have responded thus far. (The deadline for this survey was extended to Dec. 20.) A panel of five presenters gave their views on the possible creation of such an entity. Since promotion of energy transmission looms as one of the committee's concerns--and possibly one of the functions of such an entity--several of the presenters for the Jan. 19 meeting will discuss transmission.
- The program manager of the Public Safety Services Office, Department of Administration, updated the committee on efforts to find agreement on an enhanced wireless 9-1-1 program.
- A PSC commissioner gave an update on the commission's activities.
- A panel discussed the regulation of telecommunications.

Next meeting scheduled for January...The next meeting of the Energy and Telecommunications Committee is scheduled for Thursday, Jan. 19. For more information about the committee, contact Casey Barrs at (406) 444-3957 or cbarrs@mt.gov.

## ECONOMIC AFFAIRS COMMITTEE

Subcommittee and work group meetings in January...The subcommittee appointed at the Economic Affairs Committee's Oct. 28 meeting to work on the SJR 35 study of professional and occupational licensing boards will meet Jan. 19 at 6:30 p.m. in Room 102 of the state Capitol. The subcommittee will hear from interested persons who signed up for the work group to look at various components of boards, specifically on what makes a board necessary to serve public health, welfare, or safety and on budget-related matters. Subcommittee members are Sen. Vicki Cocchiarella, chair, and Reps. Mike Milburn and Tom McGillvray.

A work group on identity theft, being studied under SJR 38, will meet Jan. 9 in Room 102 of the state Capitol to continue its work on credit or security freeze topics raised at a December work group meeting. The work group also plans to discuss privacy vs. right-to-know, how businesses store and dispose of data, and third-party marketing of personal data. A credit or security freeze, which is considered a

preventive to identity theft, basically blocks access to a consumer's credit file by anyone not authorized to access the file. (For more information on this type of freeze and other aspects of identity theft prevention and mediation, see the Back Page article in this issue.) The work group has also discussed aspects of a freeze, including fees and who might be eligible to request a freeze.

Next EAC meeting set for February...The full committee will meet at 8:30 a.m., Feb. 10 in Room 102 of the state Capitol. An agenda will be posted on the committee's website in mid-January. For more information about the committee and its two studies, contact committee staff Pat Murdo at (406) 444-3594 or pmurdo@mt.gov.

## LAW AND JUSTICE COMMITTEE

Unequal access to justice...After reviewing a statewide study and hearing from analysts, attorneys, and advocates that about 84 percent of the civil legal needs of Montana's poorest citizens go unmet, the Law and Justice Interim Committee decided at its Nov. 17 meeting to take on the problem. In January, the committee will continue its work on the SJR 6 study of civil legal services for low-income Montanans. The committee will examine ways to:

- better coordinate and encourage pro bono (free and reduced fee) services by private attorneys;
- support self-represented (pro se) litigants;
- provide more immediate review and referral to appropriate legal resources; and
- enhance the free legal services available through the Montana Legal Services Association.

The MLSA is a nonprofit corporation with 14 attorneys working statewide who provide free legal assistance to people with household incomes of 125% or less of federal poverty guidelines. It is funded primarily by a federal grant and from interest earnings on money held in private attorney client trust fund accounts.

Without legal assistance, problems escalate to crisis...Based on U.S. census data and at least 100 surveys of eight demographic groups in Montana, a statewide legal needs study conducted by the Montana State Bar found that 71,388 households, consisting of 174,900 low-income people in Montana, have an average of 3.47 legal problems per household per year, or 247,716 legal problems each year. The study concluded that 83.6 percent of those legal problems go unresolved. The study also found that most legal needs are in the areas of family, housing, and employment law. People with the most legal needs (apart from incarcerated adults) include domestic violence victims, homeless persons, and Native Americans. Testimony

presented at the committee's November meeting described how an unresolved legal problem such as a child custody dispute, domestic violence, or wrongful discharge can escalate into a crisis that spirals a family down into further debt and poverty and further drains community and state public assistance resources.

What legal services are available?...Taking stock of the civil legal services available to the poor, the committee learned at its Sept. 21 and Nov. 17 meetings that the Montana Supreme Court, the state bar, the MLSA, the Montana Advocacy Project, and numerous other stakeholders have been working together to pool resources and coordinate civil services for the poor as best as they can. The Supreme Court's Commission on Pro Se Litigants, the Supreme Court's Equal Justice Task Force, the state bar's Access to Justice Committee, the MLSA, and other stakeholders have developed two websites that provide resource directories and a wealth of legal information (found at MontanaLawHelp.org and Montana ProBono.net).

A primary resource for direct attorney representation is the MLSA, which employs 14.6 full-time attorneys and 11 paralegals in 8 regional offices. The MLSA also funds a self-help law center in Billings that provides classes on how to prepare legal pleadings, computer work stations, forms, and legal advice from staff or volunteer attorneys. The MLSA reported a 2005 budget of a little more than \$2.3 million (43% of which came from a federal grant). State funding amounts to roughly \$187,000 in special revenue raised from district court filing fees for legal services for domestic violence survivors.

Free private attorney services is also an important resource. The Montana Supreme Court, through Supreme Court Rule No. 6.1, encourages private attorneys to provide free representation to those in need. The rule encourages all practicing attorneys to provide at least 50 hours of pro bono services a year. The state bar told the committee that about half of its more than 1,500 members had performed pro bono services to help low-income clients and that those services amounted to more than 14,500 hours of legal help last year.

However, the vast majority of low-income Montanans do not have access to an attorney so must represent themselves. The committee learned that the state law library often becomes a safety-net resource for people doing legal research to represent themselves.

Resources meet only 16 percent of need...The committee also learned that the civil legal services that are available are stretched very thin. Although the MLSA closed about 4,700 cases in 2004, the state bar's legal needs study showed that MLSA was able to meet only about 9 percent of the need and that pro bono services (including reduced fee services) by private attorneys met only 7 percent of the need, leaving 84% of the need unmet. However, some committee members questioned how the legal needs study defined "legal problem" and noted that not all legal problems require direct attorney representation; advocates agreed.

Key issues to be addressed at next meeting...Dur-

ing the November meeting, the committee and stakeholders discussed the importance of matching resources to needs. Discussion participants (which included two city judges, a district court judge, and representatives of MLSA, the state bar, the state law library, low-income support organizations, and recipients of MLSA, pro bono, and pro se support services) talked about the need to help people represent themselves in court (pro se) by simplifying court processes and forms, the need to do more to encourage pro bono services, the need for better coordination, and the need to enhance what services that can be provided by MLSA. The committee will focus on these issues at its January meeting.

SJR 40 Study of County Attorney Services...In November, the Law and Justice Committee decided not to consider a district attorney model for providing county attorney services, but will continue analyzing county attorney pay equity, the 50-50 split between county and state obligations for county attorney salaries, uniform standards for collecting and reporting county attorney caseload statistics, and state crime lab services.

Committee staff presented a summary of research on how district attorney systems are structured in other states. The committee discussed what additional research and fiscal information would be required to continue the examination of whether Montana should consolidate county prosecution services into districts and have elected district attorneys instead of county attorneys. The Montana County Attorney Association was leery about moving to a district attorney system. Among other things, the association said it would be difficult to identify criminal prosecution caseloads and to quantify the potential costs under that system; prosecutors elected by district instead of by county would be less responsive to local constituents; and splitting county criminal and civil caseloads could be problematic.

Department of Justice salary proposal...The Department of Justice expressed its concern to the committee about spending nearly \$2 million annually to cover the state's share of county attorney salaries. Under current law, the state is supposed to pay 50 percent of the salary of each county attorney. However, county compensation boards set county attorney salaries and negotiate pay raises. If the county does not provide timely salary information for the department to include in its budget request for county attorney salaries and negotiated increases, disputes between the state and county and between the county attorney and the county arise. The Department of Justice proposed that to simplify the process, the counties should be responsible for paying 100 percent of county attorney salaries and that the state should fulfill its share of the obligation by providing a one-time increase to the county entitlement share base amount calculated under Section 15-1-121, MCA. Under the department's proposal, the increase to the entitlement share base would be calculated according to what each county was currently spending.

Civil legal services and court technology scheduled for January meeting...The Law and Justice Committee will



meet at 8:30 a.m., Jan. 19 in Room 102 of the Capitol. The focus of that meeting will be on the SJR 6 study of civil legal services for low-income Montanans with specific information on court forms and internet-based services for pro se litigants. Also scheduled is a briefing on court information technology. For more information, contact Sheri Heffelfinger at (406) 444-3596.

## STATE-TRIBAL RELATIONS COMMITTEE

Committee tours reservation...The State-Tribal Relations Committee recently visited with the Fort Peck Tribal Executive Board in Poplar to discuss matters of mutual interest to the tribe and the state. Newly-elected Tribal Chairman John Morales welcomed the committee at the Fort Peck Community College for a day of frank dialogue. Committee members also toured local schools, visited many of the tribe's business ventures, and met with community wellness experts.

Meeting set for January...The next meeting of the State-Tribal Relations Committee is on Monday, Jan. 16 beginning at 9 a.m. in Room 137 of the state Capitol. The committee will discuss progress on its two major studies – one on economic development and the other on disparate sentencing practices in the criminal justice system – and review proposals for agreements between the tribes and the state for natural resource severance taxes.

## ENVIRONMENTAL QUALITY COUNCIL

HB 790 subcommittee goes to Sidney...The burly man strode to the podium, leaned down to the microphone and quietly said he didn't speak much in public – the last time may have been in 4-H.

But Scott Staffanson overcame his shyness to say he was grateful that a legislative subcommittee would leave the confines of the capital city.

"It's not very often that somebody comes to Sidney and says, 'Tell us your problems,'" Staffanson said.

About 70 people attended a public meeting last month about oil and gas regulations. Some, like Staffanson, were landowners who advocated at least some changes to Montana's Surface Owner Damage and Disruption Compensation statute (82-10-501, MCA). The law details the process by which surface owners are compensated by mineral developers.

Sen. Don Steinbeisser, R-Sidney, said current law works OK, but could use some fine tuning, such as requiring the mineral developer to give the surface owner more than 10 days notice of operations.

Others cautioned the panel, which is a subcommittee of the Environmental Quality Council, to be wary of making wholesale changes to statute for fear that onerous regulations would drive oil companies out of state.

"If you make it too tough with legislation, they'll

leave," said Don Franz. "They did it before."

Tom Richmond, administrator of the Montana Board of Oil and Gas Conservation, explained some aspects of current law and suggested how changes might be made if the subcommittee chooses to support legislation. Richmond did not advocate changes, but his comments included:

- Current law says notice of drilling operations must be given to the surface owner at least 10 days and not more than 90 days before commencement. Richmond said it could be changed to 20 days and 180 days.
- Providing notice to surface owners when minerals are leased could prove difficult, Richmond said, because a single tract could have more than 30 mineral owners.
- Richmond said Montana law, which now implies that there must be a surface damage agreement, could be made clearer. He said the question of state involvement in a private agreement is a difficult one, but added that some key elements to be included in agreements could be outlined in statute.
- Wyoming mandates a \$2,000 surface bond if the landowner and the mineral developer cannot reach a damage agreement. Richmond said such a requirement could be contested in court. But he added that if Montana adopted that kind of law, it should be very specific about who would hold the bond. On other bonding issues, Richmond said the committee should consider the comprehensiveness of current rules, adding that there have been very few orphaned wells – those abandoned by the developer – since 1980.
- Laws in Montana, Wyoming, and North Dakota generally do not separate coal bed methane development from traditional oil and gas regulations, Richmond said, adding that doing so could make regulation more difficult.

On the day before the public meeting, the panel spent half a day touring oil wells in the area.

The next meeting is scheduled for Jan. 26 at the Capitol. For more information, contact Joe Kolman at (406) 444-9280 or [jkolman@mt.gov](mailto:jkolman@mt.gov) or visit the panel's website: [http://leg.mt.gov/css/lepo/2005\\_2006/subcommittees/HB\\_790/default.asp](http://leg.mt.gov/css/lepo/2005_2006/subcommittees/HB_790/default.asp)

EQC Study subcommittee...The management of the state land trusts takes center stage at the Jan. 26 meeting of the EQC study subcommittee at the Capitol.

The Montana university system campuses are the beneficiaries of five separate land grants given by Congress

at the time of statehood. The common schools are recipients of similar grants. The Legislature has allowed the Department of Natural Resources and Conservation to assess fees from the earnings realized from these trust lands to cover the expenses of administering these lands.

Over the past decade, the legality of these assessments has come increasingly into question.

The January meeting will include a proposed solution to the situation.

Also on the agenda are updates of the St. Mary's Canal project as well as studies of water issues, fire statutes, and contract timber harvesting.

For more information, contact Krista Lee Evans at (406) 444-1640 or kevans@mt.gov.

Agency Oversight subcommittee...The Agency Oversight subcommittee meets Jan. 26 at the Capitol and the Environmental Quality Council meets Jan. 27, also in the Capitol. Agendas are available on the EQC web site.

For more information, contact Todd Everts at (406) 444-3747 or teverts@mt.gov. The EQC web site is: [http://leg.mt.gov/css/lepo/2005\\_2006/default.asp](http://leg.mt.gov/css/lepo/2005_2006/default.asp)

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Promoting economic success seminar set for January 25...The Children, Families, Health, and Human Services Committee is hosting a seminar on Promoting Economic Success for Montana Families on Wednesday, Jan. 25 from 10 a.m. to 5 p.m. in Room 137 of the state Capitol. Sen. Trudi Schmidt and Reps. Mary Caferro, Bill Warden, and Christine Kaufmann developed the concept after attending a National Conference of State Legislatures conference in Chicago. Mary Fairchild from NCSL is helping to develop the agenda and is providing technical assistance. Topics will include economic development, financial services, housing, education, entrepreneurship, human services, labor and workforce development, budgeting, and taxation. All legislators are invited to attend, with some interim committees being approached to sponsor their respective members. Lunch will be provided. Check the committee's website for more information in January.

Next meeting in January...The committee will meet Jan. 26 and 27 in Helena. The committee will concentrate on children's mental health and issues and options for the SJ 41 study on mental health crisis response. The committee will also discuss information on Child and Family Services related to workload, training, licensure and standards, accountability and complaint processes, prevention efforts, and child protective services legal issues. An agenda will be available in early January.

Ways to Participate...Anyone who wants to participate in the committee's activities should contact Susan

Byorth Fox at (406) 444-3597. Persons who want to be on the interested persons list can sign up for electronic notices on the committee's website or contact Fong Hom at (406) 444-0502 to be placed on the hard copy mailing list.

## REVENUE AND TRANSPORTATION COMMITTEE

The Revenue and Transportation Committee met 3 times in December, rivaling the Quality Schools Committee for the frequency of meetings in a month.

Committee evaluates property taxation of oil and gas property...At the Dec. 2 meeting, committee staff, natural gas producers, and the Montana Department of Revenue presented background reports related to the HJR 44 study of the assessment and taxation of oil and natural gas property. In particular, the committee is looking at how oil and natural gas gathering lines and related property are valued and taxed. Most of this type of property is classified as personal property and taxed at 3 percent of market value, while similar property of a few taxpayers is centrally assessed and taxed at 12 percent of market value.

Jeff Martin, committee staff, presented a brief history of the regulation of natural gas companies. In the early 1900s, some states attempted to regulate interstate natural gas pipelines. The U.S. Supreme Court eventually nixed that practice, but it was not until 1938, with the enactment of the Natural Gas Act, that the federal government regulated interstate natural gas pipelines. The act specifically exempted production and gathering of natural gas from regulation, but the Supreme Court ruled, in several cases, that producers affiliated with interstate pipelines and independent producers that sold gas to interstate pipelines were subject to regulation.

A variety of pricing schemes adopted by the Federal Power Commission eventually led to natural gas supply shortages in the 1970s. In 1978, Congress enacted the Natural Gas Policy Act that set the stage for restructuring natural gas markets. In 1985, the Federal Energy Regulatory Commission (the successor to the FPC) issued Order 486 that allowed interstate pipelines to voluntarily offer transportation services on a "first come, first served" basis. In 1992, FERC issued Order 686 requiring interstate pipelines to "unbundle" or separate their services. Many interstate pipeline companies have transferred their services to other, nonregulated corporate entities.

Dan Bermingham, representing Omimex Canada, Ltd, and John Alke, representing Fidelity Exploration and Production Co., described their natural gas operations in Montana. Omimex operates gas gathering systems in five Montana counties and gathers gas from its own wells and from wells owned by other parties. Fidelity, a subsidiary of MDU Resources Group, also operates in several Montana counties and is the largest producer of natural gas in the state. Both companies are centrally assessed by the Department of Revenue and are taxed at 12 percent of

market value. Each company has challenged the department's authority to centrally its property.

Gene Walborn, Department of Revenue, presented an overview of the central assessment of property. The department uses companywide information regardless of location of assets or customer base for determining the market value of the business entity and allocates a proportionate share of the total value to the state and to political subdivisions within the state. Walborn also discussed the department's proposed amendment to HB 569 during the regular session related to determining whether certain oil and gas property should be locally or centrally assessed.

Lee Heiman, staff attorney, discussed an Aug. 9 decision by District Court Judge Jeffrey Sherlock that invalidated part of an administrative rule related to the central assessment of property. Omimex challenged that part of the rule that allows the department to determine the central assessment of property based on the operating characteristics of the property. Sherlock's decision is at odds with an earlier district court decision that upheld the rule. However, Heiman said that Sherlock's decision raised "factual questions on the scope of central assessment by the department." In a separate report, Heiman also suggested the committee review whether central assessment of property should be a factor in the classification of property.

Department of Revenue reports...Randy Wilke, property tax administrator, discussed the department's schedule for the reappraisal of agricultural land and forest land that goes into effect Jan. 1, 2009. Agricultural land and forest land are valued on productivity rather than market value. The department has identified areas that affect agricultural valuation including soil surveys, land use, and the kinds of data needed to accomplish reappraisal. An important element of agricultural land reappraisal is the involvement of an agricultural advisory committee. That committee, created by law, provides recommendations to the department on reappraisal procedures. Wilke also presented information on the misclassification of certain agricultural land that was discovered during a pilot project conducted in four Montana counties. He said that the University of Montana School of Forestry or the U.S. Forest Service would assist the department in the reappraisal of forest lands.

Director Dan Bucks reported on the reorganization of the department and the posting on the Internet a list of taxpayers with relatively large tax delinquencies. Bucks also summarized federal legislation that may affect tax revenue in Montana. H.R. 1369, introduced in the U.S. House of Representatives, would prohibit states from taxing interstate natural gas pipelines for property tax purposes at a higher rate than other commercial and industrial property in the state and from imposing any tax that discriminates against natural gas pipelines. This legislation would be similar to protections given to railroads and airlines. H.R. 1956, also introduced in the House of Representatives, would establish a physical presence test for determining when a business activity in a state could be taxed.

Department of Transportation reports...Jim Lynch, director, Montana Department of Transportation, discussed the department's views regarding the design and implementation of transportation projects. According to Lynch, the department is committed to working with communities and local stakeholders to develop appropriate solutions to ensure that transportation projects meet the needs of local communities as well as the traveling public. Lynch provided examples of wetland mitigation and projects in Boulder, Absarokee, and Polson.

Lynch also discussed the effects of temporarily suspending the gasoline tax. Rep. Roy Brown presented his idea of using higher than expected oil and natural gas production taxes to offset the temporary loss of gas tax revenue.

Committee adopts revised general fund estimates for special session...The committee met on Dec. 13 to revise general fund revenue estimates for the special session. At its Sept. 30 meeting, the committee decided, based on a recommendation from the Legislative Fiscal Division and the governor's budget office, to revise the estimates for the individual income tax, the corporation license tax, oil and natural gas production taxes, and property taxes. The overall gains and losses in other sources of revenue were expected to be minimal.

Typically, the LFD and the budget office each make recommendations to the committee on revenue estimates. This time around, however, the differences in estimates were insignificant and were presented to the committee as "consensus" estimates. After a discussion about the price of a barrel of oil, the committee voted to adopt the revised estimates as presented. The new estimates are about \$253 million higher than those contained in HJR 2 from the regular session.

The committee also discussed a proposed rule change by the Department of Revenue that would clarify the definition of Montana source income. Some people questioned how the revised rule would be applied to the gain from like-kind exchanges. The committee considered a motion to require the department to prepare an economic impact statement (2-4-405, MCA) of the proposed change. The motion failed on a 6-6 vote.

Speaking of revenue estimates...Both the Revenue and Transportation Committee and the Legislative Finance Committee have requested the Department of Revenue work with the Legislative Fiscal Division to develop procedures to ensure that the fiscal division has access to relevant tax information for preparing revenue estimates. The Revenue and Transportation Committee may recommend legislation to clarify what information is provided to the fiscal division. This topic will be on the committee's February meeting agenda.

Committee reviews another state-tribal gas tax agreement...The state has renegotiated an existing gasoline tax revenue sharing agreement with the Rocky Boy Indian Reservation. The new agreement runs through December

2016, and changes the method for determining the number of enrolled tribal members on the reservation and revises the formula for distributing the reservation's share of gas tax revenue. The allocation of revenue to the Rocky Boy Indian Reservation is virtually identical to the existing agreement, and the agreement does not affect taxes paid by consumers.

The Montana Department of Transportation is required to present gasoline tax revenue sharing agreements to the Revenue and Transportation Committee for review and comment before the agreement is given to the attorney general for final approval. On Dec. 16, Jim Lynch, director, MDT, summarized the provisions of the agreement.

Committee scheduled to meet in February...The committee is scheduled to meet Feb. 16 and 17 in Room 137 of the state Capitol. The agenda for the meeting will be available early in February.

For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov), or Dawn Field, committee secretary, at (406) 444-3073 or [dfield@mt.gov](mailto:dfield@mt.gov). Lee Heiman is the staff attorney and can be reached at (406) 444-4022 or [lheiman@mt.gov](mailto:lheiman@mt.gov).

## MONTANA LEGISLATIVE REFERENCE CENTER

Let Me Show You Our Briefs!...One of the most useful resources available to legislators is *LegisBriefs*, a concise, informative, two-page report on a variety of topics, produced by the National Conference of State Legislatures. *LegisBriefs* covers specific topics in state government, analyzes successful approaches taken, provides interstate comparisons, suggests alternative courses of action, and lists resources for more information. Here are just a few examples of recent *LegisBriefs*:

**Hollywood in the Heartland- State Film Incentives:** The film business remains one of the nation's leading exports. It's also an industry on the move. After years of reigning supreme, Hollywood's status as the film capital of the world is threatened as the industry seeks new locations. Why do states want films to be produced locally? The answer is easy: money and lots of it. Many legislatures, recognizing the revenue potential, are undertaking aggressive campaigns to lure film production to their states.

**A Legislator's Relationship With the Public Sector :** Some states prohibit individuals from becoming involved in more than one part of the public sector. Laws may restrict a person from holding dual elected offices, "double dipping" with another publicly funded job, representing others before a state or local agency, or entering a business contract with government. At least 46 states restrict state legislators from holding another state-level office.

**Abortion Laws in the States:** The landmark 1973

Supreme Court decision in *Roe v. Wade* is now 30 years old, and abortion remains a hot button issue in state legislatures. At least 31 states have laws prohibiting certain abortion procedures, including partial birth abortion. At least 33 states restrict state funding (in the form of Medicaid or other medical assistance) to low-income women for abortions, except in cases of life endangerment, rape, incest or other selected circumstances. Although federal funds cannot be used for most abortions, states may choose to fund abortions for low-income women through other avenues.

**Electronic Communications: Are They Public Records?:** Across the United States, there is a growing interest in legislative email. Only five states have explicitly dealt with in statute whether government officials' emails should be public records. In a few states, courts have ruled on the issue, or government entities or legislatures have set policies on their own records. In many states, the issue has

not been definitively determined, but is increasingly likely to surface.

**Tribal Gaming: Sharing Revenue with States:** Gamblers spent \$16.7 billion in Indian tribal operations in 2003, according to the National Indian Gaming Commission. Subject to approval by the secretary of the Interior, tribes may agree to share a limited portion of their gaming proceeds with state and local governments. An agreement between tribal and state governments must be in place for a tribe to conduct casino-style or high-stakes gambling. Agreements usually are negotiated by the governor or a designee and sometimes require legislative approval. Tribes have regulatory responsibility for their operations, although agreements may also include a regulatory role for the state.

To see these and other *LegisBriefs* topics, contact Lisa Mecklenberg Jackson, legislative librarian, at [ljackson@mt.gov](mailto:ljackson@mt.gov) or (406) 444-2957. Don't get caught with your briefs down!

## LEGISLATIVE AUDIT COMMITTEE

The Legislative Audit Committee met Dec. 13 in Helena. Committee members include Reps. Dee Brown, Hal Jacobson, Christine Kaufmann, Scott Mendenhall, John Musgrove, chair, and Janna Taylor and Sens. Joe Balyeat, vice chair, John Brueggeman, Jim Elliott, Dan Harrington, Lynda Moss, and Cory Stapleton.

Legislative Audit Division staff presented the following reports:

### Financial Audits

Public Employees Retirement Board (05-08)...This report documents the results of the financial audit of the Public Employees' Retirement Board for the fiscal year ended June 30, 2005. The Legislative Audit Division issued

an unqualified opinion on the financial statements for the fiscal year ended June 30, 2005. This means the reader can rely on the financial information presented. Montana Public Employee Retirement Administration personnel prepare PERB financial statements from the Statewide Accounting, Budgeting, and Human Resources System with adjustments. Adjustments are made to properly present financial activity.

This report contains one recommendation related to the actuarial soundness of three retirement systems. The previous financial-compliance audit report for the two fiscal years ended June 30, 2004, contained four recommendations to the PERB. Two of the four recommendations were not material to the financial statements and will be reviewed during the 2006 financial-compliance audit. The other two recommendations related to seeking legislation to ensure Public Employees' Retirement System - Defined Benefit Retirement Plan, Sheriffs' Retirement System, and Game Wardens' and Peace Officers' Retirement System are funded on an actuarially-sound basis and that PERB implement procedures to ensure mutual and fixed fund asset balances recorded on SABHRS reconcile to the external investments, were implemented. Legislation introduced during the 2005 session to correct the funding problem was not enacted.

Teachers Retirement System (05-09)...This report documents the results of the financial audit of the Teachers' Retirement System for the fiscal year ended June 30, 2005. This report contains one recommendation related to the actuarial soundness of the system. The previous audit report contained one recommendation relating to seeking legislation for funding changes to fund the system on an actuarially sound basis. Legislation introduced during the 2005 session to correct the funding problem was not enacted.

Teachers' Retirement System personnel prepare the financial statements from the Statewide Accounting, Budgeting, and Human Resources System with adjustments. Adjustments are made to more accurately present financial activity to the readers of the statements. LAD issued an unqualified opinion on the financial statements presented in this report which means the reader can rely on the financial information presented.

Board of Investments (05-04)...The Legislative Audit Division performed a financial audit of the Board of Investments for the fiscal year ended June 30, 2005. This report contains the audited financial statements and accompanying notes for fiscal year 2005, and includes comparative information for fiscal year 2004. LAD issued unqualified opinions on the financial statements of the Board of Investments' Retirement Funds Bond Pool, Trust Funds Bond Pool, Short Term Investment Pool, Montana Domestic Equity Pool, Montana International Equity Pool, Montana Private Equity Pool, All Other Funds, and Enterprise Fund. This report contains no recommendations.

Montana Board of Housing (05-07)...This report documents the financial audit of the Board of Housing for the

fiscal year ended June 30, 2005. The objectives of the financial audit included determining if the board's financial statements presented fairly its financial position and results of operations for the period ending June 30, 2005, with comparative information for the period ending June 30, 2004. The financial statements are fairly presented. The audit report contains no recommendations to the board.

Montana Guaranteed Student Loan Program (05-06)...The Legislative Audit Division performed a financial audit of the Montana Guaranteed Student Loan Program's Federal Special Revenue Fund for the fiscal year ended June 30, 2005. This report contains the audited financial statements and accompanying notes for fiscal year 2005. LAD issued an unqualified opinion on the financial statements. The opinion means the reader may rely on the financial statement information presented.

This is an annual financial audit performed to attest to the fairness of the financial statements of the Montana Guaranteed Student Loan Program. Audit recommendations, if any, identified during this financial audit will be included in the biennial financial-compliance audit of the Office of the Commissioner of Higher Education (05-19).

Montana State University (05-11)...The Legislative Audit Division performed a financial audit of Montana State University's consolidated financial statements for the fiscal year ended June 30, 2005. These financial statements present the financial position, the results of operations, and the cash flows, on a consolidated basis, of all four campuses affiliated with Montana State University: Montana State University-Bozeman; Montana State University-Billings; Montana State University-Northern (Havre); and Montana State University College of Technology-Great Falls.

The report contains an unqualified opinion on the university's financial statements and accompanying notes for the fiscal year ended June 30, 2005, and the comparative information for the fiscal year ended June 30, 2004. The opinion means the reader may rely on the financial statement information presented. Supplemental Information on pages A-50 through A-64 is presented for additional analysis.

This audit is performed to attest to the fairness of the consolidated financial statements of Montana State University. Audit issues, if any, identified during this audit have been discussed with university management and, if appropriate, will be reported in the financial-related audit of the university for the two fiscal years ended June 30, 2007.

University of Montana (05-11)...The Legislative Audit Division performed a financial audit of the University of Montana's consolidated financial statements for the fiscal year ended June 30, 2005. These financial statements present the financial position, the results of operations, and cash flows, on a consolidated basis, of all four campuses affiliated with the University of Montana: The University of Montana-Missoula; Montana Tech (Butte); the University of Montana-Western (Dillon); and the University of Montana-Helena College of Technology.

The report contains an unqualified opinion on the

university's financial statements and accompanying notes for the fiscal year ended June 30, 2005, and the comparative information for the fiscal year ended June 30, 2004. This opinion means the reader may rely on the financial statement information presented. Supplemental Information on page A-43 is presented for additional analysis.

This audit is performed to attest to the fairness of the consolidated financial statements of the University of Montana. Audit issues, if any, identified during this audit have been discussed with university management and, if appropriate, will be reported in the financial-related audit of the university for the two fiscal years ended June 30, 2007.

### Financial-Compliance Audits

Office of the Commissioner of Higher Education (05-19)...The Legislative Audit Division performed a financial-compliance audit of the Office of the Commissioner of Higher Education for the two fiscal years ended June 30, 2005. The prior audit report contained three recommendations. OCHE implemented all three recommendations. The two recommendations in this report relate to compliance with state laws.

LAD issued an unqualified opinion on the financial schedules contained in this report. This means the reader may rely on the information presented in the financial schedules and the supporting information on the state's accounting system.

Department of Fish, Wildlife and Parks (05-18)...This audit report is the result of the financial-compliance audit of the Department of Fish, Wildlife and Parks for the two fiscal years ending June 30, 2005. LAD issued a qualified opinion on the financial schedules contained in this report. The reader should use caution in relying on the information presented in the financial schedules, as well as the supporting data on the state's accounting system.

This report contains 13 recommendations directed to the department. Twelve recommendations address various aspects of financial accountability, including revenue and expenditure recognition, federal financial reporting, cash management, expenditures processing, suspension and debarment, accounting for cash receipts during fiscal year-end, capitalization of land and conservation easements, off-line licenses, and internal service fund rates. The last recommendation relates to hunter disability determination.

This report also contains one disclosure issue related to the department's overhead account and its fund classification.

Department of Livestock (05-21)...This audit report documents the results of the financial-compliance audit of the Department of Livestock for the two fiscal years ended June 30, 2005.

This report contains four recommendations where the department could improve accounting and enhance compliance with federal and state policies and laws. It also contains one disclosure issue regarding the use of brand

rerecord deferred revenue.

LAD issued a qualified opinion on the financial schedules contained in the report. The opinion discusses errors in recording federal revenues, Board of Horse Racing activity, and revenue from new brands and brand transfers. This means the reader should use caution when analyzing the presented financial information and the supporting data on the Statewide Accounting, Budgeting, and Human Resources System.

Montana Arts Council (05-23)...This report is the result of the financial-compliance audit of the Montana Arts Council for the two fiscal years ended June 30, 2005. The recommendations in this report are related to noncompliance with state law pertaining to procurement and travel documentation requirements, and accurately recording information on the state's accounting records.

LAD issued an unqualified opinion on the financial schedules contained in this report. The reader may rely on the financial information presented in the financial schedules and the supporting data on the state's accounting system.

Montana State Library (05-22)...This report documents the results of the financial-compliance audit of the Montana State Library Commission for the two fiscal years ended June 30, 2005. The previous audit report contained no recommendations. This report contains two recommendations related to compliance with state and federal laws and policies. This report also contains a disclosure issue regarding the periodical database.

LAD issued an unqualified opinion on the financial schedules contained in this report. This means the reader can rely on the presented financial information and the supporting data on the state's accounting records

### Performance Audits

Use of Special Education Funds – Office of Public Instruction (05P-01B)...The Office of Public Instruction distributes special education funding and support services to over 400 public school districts. Performance audit objectives focused on identifying OPI controls for overseeing special education funds. Testing was conducted at OPI and at school districts. The report concluded that OPI has a system of controls in place to ensure school district compliance with financial requirements. However, analysis of trends in using special education funds identified impacts to state and local funding sources. These impacts indicate program improvements are needed. Recommendations for strengthening special education program oversight include OPI expanding analysis and reporting of information, improving budget training, and requesting legislative guidance on the need for federal funding reserves and use of special education funds.

Oversight of Special Education Services – Office of Public Instruction (05P-01A)...The performance audit focused on program criteria and monitoring controls related to classifying and providing special education services to

children with disabilities. Office of Public Instruction personnel review special education student records at school district facilities to determine compliance with federal and state laws and rules. The compliance monitoring process can be separated into three phases: 1) pre-site activities, 2) on-site activities, and 3) post-site activities. The report contains recommendations for strengthening oversight including:

**Pre-site Activities:**

- Establish details of sample selection and controls over pre-selection of student records, and incorporate previous monitoring findings into the sampling process.

**On-site Activities:**

- Ensure the appropriateness of school district eligibility determinations, and determine if proper procedures were followed for children determined ineligible.

**Post-site Activities:**

- Formalize the process and develop policies to standardize the methodology for compiling results and determining school district compliance.

**Overall Monitoring Process:**

- Designate a supervisor with oversight responsibility and review staff activities to ensure adherence to established policies and procedures.
- Strengthen documentation by mandating use of a standard set of forms statewide, clarifying how the student record review form should be completed, and revising the process used to review existing evaluation data.

## **Information System Audit**

Montana Department of Transportation – Datacenter Security – (06DP-02)...The Montana Department of Transportation operates a datacenter that houses approximately \$1.2 million of hardware designated to manage data and applications used by MDT to facilitate its business operations. The primary objective of the datacenter is to secure the hardware and information systems where data resides. The security of the datacenter creates the foundation for business continuity by ensuring data and information systems are available.

The Legislative Audit Division, Information Systems audit team, performed an audit to assess the physical, environmental, and logical controls over MDT's datacenter. This report contains recommendations to implement a process to identify and address environmental threats to the datacenter including water, power outages, and natural disasters, eliminate excessive physical access to the datacenter, and define datacenter physical access security requirements.

## **Contract Audits**

Montanan University System Workers' Compensation Program (05C-06)...This financial-compliance audit report contains the results of the audit of Montana University System Workers' Compensation Program for the fiscal year ended June 30, 2005. The audit was conducted by JCCS, PC, under contract between the firm and the Legislative Audit Division. The report contains an unqualified opinion on the financial statements on the financial statements contained in the report. This means the reader should use caution in relying on the financial information presented.

Montana State Lottery-Financial (05C-02)...This financial-compliance audit report contains the results of the audit of Montana State Lottery-Financial for the fiscal year ended June 30, 2005. The audit was conducted by GHG, PC, under contract between the firm and the Legislative Audit Division. The report contains an unqualified opinion on the financial statements on the financial statements contained in the report. This means the reader should use caution in relying on the financial information presented.

Montana State Lottery Cash Drawing Observations (05C-04)...This report contains the results of the observation of the Montana State Lottery, Department of Administration Drawings for the year ended June 30, 2005. The observations were conducted by GH&G, PC, under a contract with the Legislative Audit Division. There are no recommendations directed to the Lottery as a result of this contract report.

Legislative Branch Excluding the Consumer Counsel (05C-04)...This financial-compliance audit report contains the results of the audit of Legislative Branch Excluding the Consumer Counsel for the fiscal year ended June 30, 2005. The audit was conducted by JCCS, PC, under contract between the firm and the Legislative Audit Division. The report contains an unqualified opinion on the financial statements contained in the report. This means the reader should use caution in relying on the financial information presented.

Consumer Counsel (05C-04a)...This financial-compliance audit report contains the results of the audit of Consumer Counsel for the fiscal year ended June 30, 2005. The audit was conducted by JCCS, PC, under contract between the firm and the Legislative Audit Division. The report contains an unqualified opinion on the financial statements on the financial statements contained in the report. This means the reader should use caution in relying on the financial information presented.

Next Meeting...The next Legislative Audit Committee meeting has been tentatively scheduled for next February.





## THE BACK PAGE

### IDENTITY THEFT: IS SOMEONE PLUNDERING YOUR GOOD NAME FOR UNTOLD RICHES?

By Pat Murdo  
Legislative Research Analyst

#### INTRODUCTION

A new page on the Montana Attorney General's website calls identity theft the "top-reported form of crime" in the United States. Money magazine says that the fastest-growing group of ID theft victims are children<sup>1</sup>, whose spotless credit reports are very attractive to ID thieves counting on a theft not being discovered until the victim applies for credit at age 18 or later.

Identity theft has a broad definition<sup>2</sup> that encompasses everything from credit card fraud to the creation of a false identity through use of another person's social security number or other identifying information to apply illegally for credit. The Federal Trade Commission says simply: "Identity theft occurs when someone steals a consumer's personal identifying information to open new charge accounts, order merchandise or borrow money".<sup>3</sup> The victim may be an individual or a business.

Trying to resolve identity theft may result in a worst case of having to spend years contacting merchants or creditors in multiple states to prove that you are not the person who signed up for credit and absconded on the debt. Until you fix soured credit reports, you may be unable to buy a car or a house or perhaps even rent an apartment or get a job because, to anyone checking your credit report, you will appear to be a bad risk. The underworld sale of social security numbers (SSNs) and other identifying information can make the innocent victim's life a nightmare of having to always prove who they are not.

<sup>1</sup>Michael Sivy, "Child identity theft (you read that right) shows how cracked the system is," *Money*, December 2005, page 32. One comment from this article notes that "90% of newborns are signed up [for social security numbers] before they leave the hospital, for tax-reporting reasons. What's more, the lack of a credit record makes kids a bigger target."

<sup>2</sup>Montana's definition of identity theft is in 45-6-332, MCA. It reads in part:

**45-6-332. Theft of identity.** (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person. . .

<sup>3</sup>Federal Trade Commission, "Financial Institutions and Customer Data: Complying with the Safeguards Rule," FTC Facts for Businesses, <http://www.ftc.gov/bcp/conline/pubs/buspubs/safeguards.htm>.

The simpler cases of identity theft may involve a credit card number being stolen either electronically or in person. If this type of credit card fraud is not always reported [did you or your credit card issuer contact the Federal Trade Commission (FTC) for your wrongful credit card charges?], then the data gathered by the FTC on ID theft most likely are underreported.

Nationwide, about 10 million people a year reportedly experience identity theft. FTC data for Montana in 2004 indicated that the largest number of ID thefts involved credit card fraud, 30% compared with 17% for either phone/utilities fraud or bank fraud (see chart). The statistics listed

364 Montanans as filing ID theft reports with the FTC, about

half of them in the larger cities (see chart). Nationwide about 246,570 people filed FTC reports, sometimes in more than one category.

#### Types of Reported Identity Theft and Number of Montana Victims

| (2004)   |               |
|--|---------------|
| Type   | # of Victims* |
| • Credit card fraud  | 110           |
| • Fraud re: phone/utilities  | 63            |
| • Financial fraud (checking or saving accounts, electronic fund transfers) | 62            |
| • Employment-related fraud   | 29            |
| • Government documents or benefits fraud                                   | 21            |
| • Loan fraud   | 21            |
| • Other  | 107           |

\*Approximately 22% of Montana ID theft victims report experiencing more than one type of ID theft.

Source: Identity Theft Data Clearinghouse,

#### Top Montana Locations for Identity Theft Victims

(2004)

| City        | # of Victims |
|-------------|--------------|
| Billings    | 58           |
| Missoula    | 42           |
| Bozeman     | 35           |
| Great Falls | 30           |
| Helena      | 24           |

Source: Identity Theft Data Clearinghouse, Federal Trade

#### MONTANA ACTIONS TO DATE

In 2001 and 2005, Montana's legislators provided tools for ID theft victims and potential victims. The 2001 Legislature defined identity theft as a crime and provided both misdemeanor and felony penalties, depending on the economic loss. In 2005 the Legislature created an identity theft passport, which essentially says that the person holding the "passport" is a bona fide victim of identity theft and, as such, can use the passport as an official document in filing reports with the Federal Trade Commission and credit reporting agencies. The passport also can inform law

enforcement officials that the passport holder is a victim of ID theft and may not be the actual target of the arrest warrant.

Also in 2005 the Legislature passed House Bill 732, which requires notification of certain computer data breaches (see below), further defines personal identifying information, requires businesses to take reasonable steps to make unreadable or otherwise destroy a customer's records after the records are no longer needed, and requires notification at old and new addresses when a telephone or credit card customer changes addresses. This latter type of notification is intended to avoid situations where a person first applies for credit or a telephone account by using another person's name (and credit report), then switches the billing address so that the person whose name is on the account (the victim) does not learn that charges are piling up in his or her name. Utility companies in Montana provide a similar notification service.

### **COSTS AND LIABILITIES**

The cost of credit card fraud for a consumer might be limited to \$50 if a theft is reported as soon as it is discovered.<sup>4</sup> Of course the real cost may be much more than the actual cost. Thousands of dollars might be illicitly charged in the original transaction. Who covers these costs? A Visa USA vice president, Paul Russinoff, notes that credit card issuers (for example, banks) most often are responsible for the loss but that merchants may be liable if their practices do not comply with Visa's requirements. Ultimately charges are passed along to customers, which reinforces the "buyer beware" adage because responsible merchants may, ultimately, have lower costs of business.

Monetary expenditures are only part of the costs of ID theft. The potential for ongoing problems includes some of the following experiences:

- Damaged credit and damaged credit scores, making access to new credit or home buying problematic and potentially driving up the cost of your insurance policies.
- Arrest. Some ID thieves use someone else's name in a crime and then police put out a warrant for that person's arrest.
- Dunning by collection agencies, sometimes even after you have reported that you are a victim of ID theft.

---

<sup>4</sup>There are questions about whether businesses engaged in online commerce are protected by the Fair Credit Reporting Act or whether the Uniform Commercial Code's liability limits prevail. See reference in Byron Acohido and Jon Swartz, "Cyber crooks break into online accounts with ease", *USA Today*, Nov. 2, 2005, at [http://www.usatoday.com/tech/news/computersecurity/2005-11-02-cybercrime-online-accounts\\_x.htm](http://www.usatoday.com/tech/news/computersecurity/2005-11-02-cybercrime-online-accounts_x.htm)

- Lost time and, to a degree, loss of money. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., says that a credit card holder is liable only for the first \$50 if the victim reports the wrongful charge as soon as it is noticed. Averaged out, the costs per victim in lost time are estimated at 330 hours of trying to fix credit histories, between \$851 and \$1,373 in out-of-pocket expenses, and \$4,000 in lost wages, according to 2004 data from the Identity Theft Resource Center.

### **CYBER PROBLEMS ARE EVERYWHERE**

The potentially frightening aspect of identity theft is that, unlike the old-fashioned, place-specific wallet theft or burglary, ID theft can be done in cyberspace, including by people in foreign countries who can target large numbers of unsuspecting people by hacking into computers that store identifying information like social security numbers, names, addresses, and birth dates. The scam email from a Nigerian who says he will send you money if you provide your bank account numbers is possible because of the global reach of the Internet.

As contacts become easier, tracking down the criminals becomes more and more difficult. Being alert to an initial fraud is an important step in preventing further loss. This is one of the reasons that more states, like Montana did through House Bill 732, are requiring notification of breaches in data security.

### **ID THEFT VS. DATA BREACH**

Being an ID theft victim is not the same as being notified that your personal identifying information may have been stolen because of a security breach in an electronic or paper file. This type of data breach affected more than 56 million people in 102 incidents (there may have been some duplication) tracked by the Identity Theft Resource Center between January and September 2005. Entities with data security breaches ranged from universities to health care companies to the Nevada Department of Motor Vehicles.

After passage of a California law requiring that customers be notified if data security is breached, ChoicePoint, a data gatherer and reseller, became national news in February 2005 because an ID thief posed as a business client to fraudulently obtain identifying information on thousands of people. Ultimately ChoicePoint notified 145,000 people that their data had been compromised. Of that number, 750 became ID theft victims, according to an MSN Money report.<sup>5</sup>

Montana joined 20 other states in requiring notification for security breaches with passage of House Bill 732, enacted as Chapter 518, Laws of 2005. The notice applies only to a

---

<sup>5</sup>Liz Pulliam Weston, "Blame lenders, not thieves, for identity theft," MSN Money. <http://moneycentral.msn.com/content/Banking/FinancialPrivacy/P48173.asp>.

person or a business (not government) whose computerized, unencrypted data "was or is reasonably believed to have been acquired by an unauthorized person".<sup>6</sup> A work group making recommendations to the Economic Affairs Interim Committee (EAIC) as part of the Senate Joint Resolution 38 study on identity theft is planning to suggest that the notification provision also apply to government.

#### **NEXT STEPS: PREVENTING SOCIAL SECURITY NUMBER THEFTS**

The importance of social security numbers as a key identifier is evident in the definition of personal identifying information provided in 30-14-1702, MCA, which says that a social security number "in and of itself" is personal information. One of the major recommendations for preventing ID theft is to limit access to your SSN by not carrying it in your wallet and not providing it to just anyone who asks. Legislation in 37 other states in 2005 proposed actions to prevent the display or require truncation of social security numbers.

Concerns about the proliferation of SSN usage and misuse are resulting in reconsideration of old laws. For example, the Montana Motor Vehicle Division (MVD) will no longer allow drivers to use their SSN on a driver's license, even a commercial driver's license. The Department of Justice will be asking for a change in state law that says a person can request use of the SSN as the driver's license number, according to Dean Roberts of the MVD.

The SJR 38 work group on identity theft also will be asking the EAIC to urge state and local governments to comply with the Privacy Act of 1974, 5 U.S.C. § 552a [note]. Although uncodified, section 7b as enacted in Public Law 93-579 says:

Any federal, state, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

A check of various state online documents requesting SSNs indicates very few agencies offer this explanation.

The work group also wants the EAIC to request that the Department of Public Health and Human Services apply to the U.S. Department of Health and Human Services for an exemption so that people do not have to show their SSN when applying for hunting and fishing licenses. The federal requirement to provide a SSN for these and other types of licenses, as well as death certificates and divorce and child support documents, began with passage of the Personal Responsibility and Work Opportunity Reconciliation Act of

1996. In an attempt to find parents who owe child support, including scofflaws who reneged on support payments sometimes leaving their children and former spouse in poverty and on welfare, the government tied federal dollars for child support enforcement and, indirectly, funds for Temporary Assistance to Needy Families to having a state plan that requires providing SSNs when obtaining various types of licenses and certificates.

Typing your SSN on your computer or giving it over the phone can be problematic if you are not sure of the person or business that is gaining access to the number--or whether your computer security system can protect against "trojan" computer codes that can read and transmit such information to an ID thief<sup>7</sup>.

One area where social security numbers will remain until computer systems change is on state employee health insurance cards. Although employees may request that a different identification number be used, Department of Administration officials say that the use of other identifiers slows down claims processing. The department is working with health insurance providers and expects the computer system changes to be effective within 2 years.

#### **NEXT STEPS: CREDIT OR SECURITY FREEZES**

When shopping last month (or whenever), how often were you asked whether you would like to get a 10% discount on everything you purchased that day if you opened a credit card account under that store's name? This quick granting of credit is made possible by the ability of merchants to access credit reports and determine quickly if the applicant is a good credit risk. A credit or security freeze would slow down that process as well as any other quick access to credit, for example at car lots.

The offsetting benefit of a credit or security freeze is that someone using your identifying information could not apply for credit in your name because access to your credit account is frozen until you lift it. States that allow credit or security freezes allow consumers to lift the freeze temporarily, usually for a fee, if they are in the market for a car or other credit.

Credit or security freezes are considered one of the broadest ID theft prevention measures but they involve a tradeoff--limiting quick access to credit and requiring credit reporting agencies to take actions at a consumer's request. Freezes are under consideration in Congress and currently are available only in states that have passed laws allowing them.

Some states allow only identity theft victims to impose credit or security freezes. Other states say any consumer can impose a freeze on outside access to his or her own credit report. The philosophical question often associated with

---

<sup>6</sup>Montana's computer security breach statutes, 30-14-1704, and 33-19-321, MCA, become effective March 1, 2006.

---

<sup>7</sup>For more about "trojan" computer codes and online data theft, see Byron Acohido and Jon Swartz, *op. cit.*

freezes asks: Who owns the information, the consumer or the credit reporting agency?

If Congress passes a uniform freeze law, then state laws on the subject may be preempted. If Congress does not pass a freeze law, credit reporting agencies are hoping that states will implement similar criteria so they are not dealing with 50 different laws regarding who can implement a freeze, whether freezes are free or fees can be charged, and how quickly freezes can be implemented or thawed.

#### **NEXT STEPS: EDUCATION**

Businesses and individuals all have a stake in taking precautions to protect against ID theft. Financial institutions long have included information in mailings on how to avoid ID theft. News articles and various newsletters provide advice similar to that available from the FTC and provided in abbreviated form in the chart below.

Education for consumers and businesses is only part of the equation. The Montana Department of Justice also has begun working with law enforcement and county attorney offices to implement the identity theft passport program and create more awareness of both misdemeanor and felony ID theft.

#### **NEXT STEPS: CONSIDERATION OF LEGISLATION**

The EAIC will hear recommendations from the SJR 38 work group on identity theft Feb. 10 and may propose legislation or further discussion of issues at that time. In the meantime, Congress may act in early 2006 on a variety of measures dealing with data security breaches, uses of SSNs, credit or security freezes, and whether prosecution is by state or federal authorities. The top-reported crime is getting attention.

#### **Tips for Minimizing Exposure to ID Thieves**

(From the Federal Trade Commission)

- Order a copy of your credit report from one or all three national credit reporting agencies at [www.annualcreditreport.com](http://www.annualcreditreport.com) or by calling toll free 1-877-322-8228. Do not contact the major credit reporting agencies individually. You get one free credit report from each major agency each year. Review the report to see if new credit is being provided in your name that you did not seek.
- Ask that only the last 4 digits of your Social Security number be used on your credit reports.
- Place hard-to-guess passwords on credit card, bank, and phone accounts. If asked for your mother's maiden name, ask if an alternate password is OK.
- When asked for your personal information at businesses, including doctor's offices, verify the security and disposal procedures.
- Do not give out personal information on the phone, through the mail, or on the Internet unless you initiated the contact and are certain that the contact is legitimate. Clicking on an email from a business that appears to be legitimate might lead you to a false website. If in doubt, retype the organization's URL or call a phone number sent you on a billing statement rather than the website number to verify information.
- Shred unwanted, unsolicited credit card applications received in the mail. You can opt out of receiving these applications by calling 1-888-567-8688. The FTC notes that you will be asked for your social security number.



# INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

| Sunday       | Monday   | Tuesday | Wednesday   | Thursday  | Friday   | Saturday |
|--------------|--|---------|---|---|--|----------|
| January 2006 |  |         |   |   |  |          |
| 1            | 2  | 3       | 4   | 5<br>HJR 10 Fire Study<br>work group, Room<br>137, 10 a.m.  | 6  | 7        |
| 8            | 9<br>SJR 38 Identity<br>Theft work group,<br>Room 102            | 10      | 11  | 12  | 13   | 14       |
| 15           | 16<br>State-Tribal Rela-<br>tions Committee,<br>Room 137, 9 a.m. | 17      | 18  | 19 Energy and<br>Telecom. Committee<br><br>Law and Justice<br>Committee, Room<br>102, 8:30 a.m.<br><br>Economic Affairs<br>Com., HJR 35 sub-<br>committee, Room<br>102, 6:30 p.m. | 20   | 21       |
| 22           | 23   | 24      | 25<br>Children, Families,<br>Health, and Human<br>Services Committee<br>Promoting Economic<br>Success seminar,<br>Room 137, 10 a.m. | 26 HB 790<br>subcomm.<br><br>EQC Study sub-<br>committee<br><br>EQC Agency Over-<br>sight subcommittee<br><br>Children, Families,<br>Health, and Human                            | 27<br>Environmental<br>Quality Council<br><br>Children, Families,<br>Health, and Human<br>Services Committee | 28       |
| 29           | 30   | 31      |   |   |  |          |

| Sunday        | Monday | Tuesday | Wednesday | Thursday   | Friday  | Saturday |
|---------------|--------|---------|-----------|--|---|----------|
| February 2006 |        |         |           |  |   |          |
|               |        |         | 1         | 2  | 3   | 4        |
| 5             | 6      | 7       | 8         | 9  | 10<br>Economic Affairs<br>Committee, Room<br>102, 8:30 a.m.     | 11       |
| 12            | 13     | 14      | 15        | 16<br>Revenue and Trans-<br>portation<br>Committee, Room<br>137  | 17<br>Revenue and Trans-<br>portation<br>Committee, Room<br>137 | 18       |
| 19            | 20     | 21      | 22        | 23<br>Postsecondary Edu-<br>cation Policy and<br>Budget subcom-<br>mittee, Room 102, 9<br>a.m.<br><br>Local Government<br>subcommittee | 24<br>Education and Local<br>Government Com-<br>mittee          | 25       |
| 26            | 27     | 28      |           |  |   |          |







LEGISLATIVE SERVICES DIVISION  
PO BOX 201706  
HELENA MT 59620-1706